

DATE: January 17, 1996

TO: Office of the Secretary

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FROM: Dan Bring

SUBJECT: Testimony for En Banc Hearing on Digital Television

Please find attached two copies of Barry Diller's testimony for the December 12, 1995, En Banc Hearing on Digital Television, MM Docket No. 87-268.

**FCC HEARING ON ATV / PUBLIC INTEREST****RECEIVED**Opening Statement  
by Barry Diller**DOCKET FILE COPY ORIGINAL**  
**JAN 18 1996**  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

The only sane way I know of to begin this discussion is to flatly say how ridiculously complicated the whole topic is: new technologies, old systems and the displacement of old players, new sources of revenue, potentially disenfranchised consumers, eager new players, and, of course, the future of what we now call free broadcasting. The truth is, I don't envy this Commission its task and I'm somewhat reluctant to play the role of backseat policymaker. Nevertheless, you've been generous enough to ask my opinion, an always dangerous thing, and I will comply as best I can.

This much I can say with certainty: anyone making hard predictions on how all this will come out is more than likely to be wrong. Guessing at the behavior of 250 million people, except in this year by the programmers at NBC, is no easy trick. So to proceed on the assumption we can safely lay down a comprehensive ATV policy is ridiculous. Nonetheless, the technology may be on the verge of viability and we have no choice but to set preliminary guidelines lest we artificially retard the process.

My gut tells me that, in this case, less is more. Rather than over-intellectualize ATV, let's establish that no matter what form it takes, it should be primarily organized as an evolution of our old, mass free broadcasting system. This system has served us well for over half a century, providing us with the most prolific and diverse television programming in the world, along with the most possible complaints about its shortcomings. The mechanism that has made this possible is that unique, though always precarious balance between commerce and responsibility. Our system is four parts free market and one part public interest obligation: the latter is more subtle but the recipe is worthless without it.

I think that same formula is well applied to rulemaking involving future technology. Any absolute dictation to the marketplace -- whether mandating HDTV transmissions or fixing the timing of conversion -- is bound to do more harm than good. The beauty of our existing system is that it flows with the rhythm of the market and only kicks in to keep broadcasters from getting too out of sync with the public. We really don't know if consumers will want better pictures or more channels or anything at all. If there is a market for HDTV, someone will go for it. If cable or the telcos get there first, don't worry: it may be at their last breath but broadcasters will certainly follow...or, conversely, one broadcaster, believing it will gain some advantage will take the early lead and reap the rewards or fall on its face. In what may be the ultimate chicken and egg scenario, to force anyone in or out of the coop, except of course for the Fox, would be foolish.

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However, no matter how many channel choices technology provides us, nor how much free mass broadcasting is worth preserving, free must be a reciprocal street. To the extent that broadcasters maintain their historic obligations to program in the public interest -- for free -- they should continue to get their licenses for free. If they use some of the new digital spectrum for pay services, then it is right and proper that they pay the going rate. And if any free stations -- not just strictly-defined news or educational channels -- do not demonstrate strong and sincere commitments to the public interest, then such broadcasters should be replaced with programmers willing to honor the public's interest.

This will definitely require a reinvigoration of this Commission's responsibility to proactively enforce broadcasters compliance with the public interest. But, I've been arguing that's necessary regardless of whether you broadcast through digitally delivered fibre or pipe cleaners. Whatever the distribution, we must fix this now or the system we have enjoyed for so long will be truly endangered. And I think balancing new services with general public interest responsibility is a better and more sensible course than mandating all sorts of things like date-certain timings for conversion and auctions based thereon, much less give backs and minimums for a marketplace that doesn't yet exist.

I wish you all the best of luck. Thank you.